



Brexit & Future EU

An Ibec campaign

Ibec Tracker on the Protocol on Ireland and Northern Ireland

March 2023

Ibec has developed this tracker to assist business leaders to follow developments on the Protocol on Ireland and Northern Ireland (the Protocol). This tracker looks in detail at the agreed legal texts and joint policy decisions of the EU and the UK. It is updated as the agreed arrangements are implemented, outstanding issues progressed and arising difficulties are addressed. This version of March 2023 takes account of the political agreement in principle between the EU and the UK, known as the 'Windsor Framework'. This framework addresses concerns raised regarding trade between Northern Ireland and Great Britain and proposes solutions by way of amendments to the specific articles of the Protocol, while other articles will remain unchanged.

Background

The Protocol is critical to post-Brexit continuity, stability and security of business on the island of Ireland. It is the mechanism agreed between the EU and the UK to protect the all island economy, the Belfast / Good Friday Agreement, and the integrity of the EU and UK internal markets. Its unique arrangements are designed to avoid a physical border on the island of Ireland. Part of the Withdrawal Agreement, it has been ratified by the EU and UK meaning it is a legally binding international treaty. The Protocol applies exclusively to the island of Ireland and came into force on 1 January 2021.

As per the Withdrawal Agreement, the EU and the UK established a Joint Committee with responsibility for its overall implementation and application. It is jointly chaired by European Commission Vice-President Maroš Šefčovič and the UK Foreign Secretary James Cleverly. The Joint Committee is supported by six Specialised Committees on the key areas for the implementation of the Withdrawal Agreement: Citizens' Rights; Other Separation Provisions; Protocol on Ireland and Northern Ireland; Protocol on the Sovereign Base Areas in Cyprus; Protocol on Gibraltar; and Financial Provisions.

The Specialised Committee on the Implementation of the Protocol on Ireland and Northern Ireland deals with its main elements including:

- > Continued alignment of NI to a limited set of EU rules, notably related to goods, and to avoid customs checks and controls on the island of Ireland;
- > Necessary checks and controls on goods entering NI from GB, such as Border Inspection Posts to conduct sanitary and phyto-sanitary (SPS) controls;
- > Application of EU customs duties to goods entering NI unless they are not at risk of entering the EU's single market.

The Protocol is in place to protect the Belfast / Good Friday Agreement, and as such it is intended to be a stable and lasting solution that will apply alongside any agreement on the future relationship between the EU and UK.

It is important that the detailed arrangements operate in such a manner as to honour the principles and intention of the Protocol.

Implementing the Protocol is a unique and unprecedented challenge. Even with the Protocol and the EU-UK Trade and Cooperation Agreement (TCA), there has been an impact on business operations on the island of Ireland. It is a 'living framework' that will evolve over time. The 'Windsor Framework' if finally agreed and ratified by the UK Parliament and EU institutions will form part of that evolution. As it does, Ibec has been and will closely monitor its operation and performance on behalf of business and respond to problems impacting on our members with the Irish Government through our Dublin and Brussels offices and remain close to the work of the Joint Committee and its Specialised Committee along with the Joint Committee Working Group.

In playing its part to support the practical and effective implementation of the Protocol in all its parts, as potentially amended by the 'Windsor Framework', Ibec will be particularly cognisant of both protecting the integrity of the operation of the EU single market on this island and the vote to take place in the Northern Ireland Assembly in 2025 on the retention, or otherwise, of the parts of the Protocol that relate to the movement of goods.

Through our campaign '[For Peace and Prosperity: The Economic and Social Benefits of the Belfast/Good Friday Agreement](#)' Ibec is marking the 25th anniversary of the signing of the Belfast / Good Friday Agreement. The campaign illustrates the pivotal role that business has played in perpetuating peace and prosperity on the island. It aims to facilitate a reflective, thoughtful and inclusive conversation on the positive economic impact of the Agreement. The campaign highlights how the stability brought about by the Agreement has enhanced the economies of Ireland, Northern Ireland and the all-island, embedding stability and economic success in a new totality of relationships.

This tracker provides information on the Protocol and potential amendments proposed by the Windsor Framework, through a dedicated section on issues relating to the movement on goods and a general section addressing broader and overarching items. You can find the official EU documents [here](#) and the official UK documents [here](#).

1. Movement of goods:

- > Operations
- > Rules of origin
- > Labelling
- > UK duty reimbursement scheme
- > Transit requirements for the UK landbridge
- > Oversight of the EU Union Customs Code in Northern Ireland
- > Criteria for 'goods at risk' of entering the EU single market
- > Requirements and solutions for specific goods and/or traders

2. Governance and general cooperation:

- > Governance of the Protocol
- > North-South cooperation
- > Common travel area (CTA)
- > Fraud and illegal activity
- > UK state aid in relation to agricultural goods
- > Fisheries

The Windsor Framework

On 27 February 2023, the European Commission and UK Government announced a political agreement in principle on the Protocol; the Windsor Framework. The Windsor Framework represents a new agreement on how to implement the Protocol. It would not replace the Protocol but would rather amend the Protocol, clarifying the conditions for the implementation of the Protocol with particular regard for the movement of goods from Great Britain (GB) to Northern Ireland (NI).

The Windsor Framework has three goals.

1. It aims to reaffirm full commitment to the Belfast / Good Friday Agreement, avoid political instability in NI, ensure peace, and protect its citizens.
2. It aims to ensure lasting certainty and predictability for people and businesses in NI to generate increased economic activity, investment, and prosperity.
3. It aims to preserve the integrity of the EU single market and the UK internal market, providing NI unique access to both.

The joint solutions are found **within the framework of the existing Withdrawal Agreement**, including the Protocol, under Article 164 that provides for the ability to correct errors, address omissions or other deficiencies, or to address situations unforeseen when the Withdrawal Agreement was signed. In this way, the Protocol can be amended up until the end of 2024. This is based on the following starting points:

- A solution to address practical difficulties in the operation of the Protocol;
- A balance between flexibilities for the movement of goods for end use in NI and effective safeguards guaranteeing the protection of the EU's single market;
- A distinction between goods at risk and not at risk of entering the EU.

The Windsor Framework addresses issues for GB-NI trade in goods and issues raised by the UK Government and European Commission with regard for sanitary and phyto-sanitary (SPS) rules, customs, medicines, VAT and excise rules, governance, tariff rate quotas, pet travel, and state aid.

For goods moving from GB-NI, the agreement includes proposals to introduce a 'green lane' for goods moving from GB-NI and a 'red lane' of goods destined for the EU single market. The 'red lane' will operate under effectively the same conditions as goods moving from GB-IE and the requirements under the 'green lane' will be gradually reduced over the coming 12-18 months as the UK meets certain conditions.

It should be noted that the Court of Justice of the EU remains the sole and ultimate Arbiter of EU law that is applied in the whole EU single market, including NI with respect for goods. However, the Framework will include the Stormont Brake, whereby Members of the Legislative Assembly (MLAs) in NI would have a capacity to raise objections to incoming EU law affecting NI.

On the whole, the Windsor Framework essentially commits the UK to meeting the conditions it agreed to in December 2020. This includes 'full implementation' of the Protocol with respect for providing the EU with access to customs IT systems to monitor the movement of goods from GB-NI remotely, building customs infrastructure in NI, and introducing labelling on products intended to remain in NI. In return, the EU has clearly outlined how customs and SPS checks can be eased for GB-NI movements of goods in limited circumstances and with safeguards in place.

The Framework will amend the operation of the Protocol for GB-NI movement of goods. The proposed conditions for 'green lanes' will be gradually introduced over 12-18 months as the UK Government meets the outlined requirements. The Framework should not impact on the Shared Island economy nor NI-EU movements of goods via 'red lanes' whatsoever.

Next steps

The UK Government will no longer proceed with the Northern Ireland Protocol Bill.

The EU will withdraw all of the legal actions it has launched against the UK for non-implementation of the Protocol.

The UK Government is now giving time to political parties in NI to consider the Windsor Framework. This undefined period will be followed by a vote in the UK Parliament to approve the agreement.

The EU and the UK must each proceed to adopt legislative amendments to introduce the Windsor Framework. A meeting of the EU-UK Joint Committee under the Withdrawal Agreement will take place in the coming weeks to adopt the necessary joint measures.

Following the legal processes, the EU and UK will then act to proceed with the agreed steps. It is expected that the Windsor Framework will be gradually implemented over the coming 18 months before being fully implemented by the end of 2024.

Analysis

| Issue | Description | Outcome |
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| 1. Movement of goods | | |
| EU-NI and NI-EU (including IE-NI and NI-IE) | | |
| | <p>The Protocol is the mechanism agreed between the EU and the UK to protect the all-island economy, the Belfast / Good Friday Agreement, and the integrity of the EU single market (SM). It is designed to avoid a hard border on the island of Ireland in the context of Brexit.</p> | <p>The Protocol ensures that there will be no customs formalities for trade in goods between Ireland and Northern Ireland. In this respect, the movement and trade in goods between the island of Ireland, including Ireland and Northern Ireland, and the EU continues as under the same conditions prior to the UK's withdrawal from the EU. The Windsor Framework does not impact on this in any manner.</p> <p>Under Article 18 on democratic consent, before the end of 2025, the UK must provide the opportunity for democratic consent in Northern Ireland to be affirmed to allow the continued application of the Protocol in the form of a vote by the Northern Ireland Assembly.</p> |
| NI-GB | | |
| General | <p>As per the Protocol, the UK committed to ensuring "unfettered access" for moving NI goods to GB.</p> | <p>Since the implementation of the Protocol in January 2021, business has not identified any issues of note with the movement of goods from NI to GB. The Windsor Framework does not impact on this in any manner.</p> <p>When publishing the Windsor Framework, the EU confirmed that goods moving from NI to GB will not be subject to EU-required customs procedures, except in limited circumstances where the EU is required to check exports via international obligations (e.g., endangered species, hazardous chemicals, firearms etc.). Where applicable, the checks will be carried out by HMRC.</p> |
| NI Qualifying goods | <p>For NI to GB trade in goods, the UK Government has introduced a definition for "qualifying NI goods" which ensures "unfettered access" for goods physically present in NI and not under a customs procedure or in an authorised temporary storage facility to move to GB since 1 January 2021. The UK Government had announced its intention to tighten this definition to only benefit businesses established in NI. However, at the time of writing, the definition remains unchanged.</p> <p>The UK Government confirms that these protections for qualifying businesses on arrival in GB apply whether goods are moved directly to GB or indirectly via Ireland. Non-NI traders moving "non-qualifying goods" are subject to the UK's full process for third country customs and agri-food checks as they are implemented in accordance with the timelines to be set out in the UK Government Target Operating Model, the publication of which is expected in 2023.</p> <p>The UK Government intends to introduce specific arrangements for NI agri-food trade in future to give clearer qualification requirements to safeguard the sector's reputation, while ensuring that these do not impose any additional burden for manufacturers or other traders using NI ports. At the time of writing, details of what this will mean in practice for NI companies have yet to be provided.</p> <p>Irrespective of the above, some "qualifying" goods will be subject to customs and agri-food checks where human, animal or environmental health checks are required.</p> | |

| Issue | Description | Outcome |
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| Export declarations | <p>Under EU customs law applicable in NI, any goods leaving NI need to be accompanied by an exit summary declaration. However, the EU-UK joint agreement of December 2020 confirms via a unilateral UK Declaration that the Protocol does not require export or exit declarations for NI-GB trade. Instead, the EU and the UK must ensure reciprocal access to relevant data on such movements.</p> <p>Irrespective of this, 14 categories of trade subject to international obligations (e.g., endangered species) have specific obligations. In this regard, standard export procedures apply where goods are under a certain procedure, subject to restrictions or the EU export procedure or do not exceed EUR 3,000 in value and are packed or loaded for export shipment within the Union.</p> | |
| VAT | <p>The Windsor Framework includes some draft changes to the Protocol in terms of the application of EU VAT and excise rules in NI. In principle, the Protocol means that NI maintains alignment with the EU VAT rules for goods, including on goods moving to, from and within NI. However, NI remains part of the UK's VAT system meaning that UK VAT rules related to transactions in services will apply across the whole of the UK. In addition, HMRC continues to be responsible for the operation of VAT and collection of revenues in NI.</p> <p>There is no requirement for new VAT registration for sales of goods in NI. The EU and the UK have agreed a process for identifying NI traders for VAT purposes for which detailed guidance is available.</p> <p>The Windsor Framework includes three draft changes to VAT and excise in NI. These would apply once the EU-UK Joint Committee adopts the proposals.</p> <ol style="list-style-type: none"> 1. The UK can apply reduced VAT rates: <ol style="list-style-type: none"> a. On goods supplied and installed in “immovable property” in NI, even if the applicable UK VAT is below EU minimum rates (e.g., domestic heat pumps). b. To a higher number of categories of goods than allowed under EU law. 2. The UK is not required to apply the special EU VAT scheme for small enterprises in NI when it applies from 1 January 2025. However, if the UK applies its own scheme, it must respect the annual turnover threshold under EU law. 3. The EU and UK will explore establishing a list of goods “not at risk of entering the EU single market” <u>and</u> which would not be subject to EU VAT rules for five years subject to review, and to evaluate arrangements for cross-border refunds. 4. The UK will be allowed to: <ul style="list-style-type: none"> • tax all alcoholic beverages based on their alcoholic strength in NI; • apply reduced excise duty rates to all alcohol served for immediate consumption in hospitality venues; • apply its own small producer's scheme for alcoholic beverages in NI. <p>However, small producers of alcoholic beverages in NI will not benefit from mutual recognition procedures provided by EU law and the UK will not be able to apply any duty rate below the EU minimum.</p> <p>In support, the EU and the UK government have agreed to establish an “Enhanced Coordination Mechanism” to discuss VAT and excise issues, includes relevant new EU laws.</p> | |

| Issue | Description | Outcome |
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| GB-NI | | |
| | <p>The Protocol includes the implementation of some customs formalities on the movement of goods from GB-NI. Since 1 January 2021, the UK has not implemented these arrangements fully. At present, it remains that the UK has unilaterally extended several “grace periods” with regard for movements of goods from GB-NI (e.g., chilled meat).</p> <p>The substantial elements of the Windsor Framework for business concern the easement of the arrangements for the movement of goods from GB-NI.</p> <p>The Windsor Framework includes a broadened Trusted Trader Scheme, whereby goods moved by trusted traders from GB-NI that are not at risk of entering the EU single market can benefit from reduced customs formalities and SPS checks on movements of goods from GB-NI. This new scheme is expected to be operational from September 2023. It will be available to companies based in GB as well as NI, while currently it is limited to NI, provided the company has a customs representative in NI.</p> <ul style="list-style-type: none"> • Physical checks will be carried out on a risk basis and “intelligence-led approach”. • Remote documentary checks will be carried out on all the general certificates accompanying the consignments of retail goods. • Identity checks will be drastically reduced in tandem with the implementation of appropriate safeguards. <ul style="list-style-type: none"> ○ From 1 October 2023, the frequency rate will be down to 10% of all consignments of retail goods. ○ From 1 October 2024, the frequency rate will be further reduced to 8% when all milk and dairy products are individually marked (see Labelling section below). ○ From 1 July 2025, the frequency rate will be furthermore reduced to 5% when all retail goods are individually marked (see Labelling section below). <p>Where the goods are for final consumption in NI:</p> <ul style="list-style-type: none"> • A general single certificate for mixed loads of agri-food goods will apply. • UK public health standards will apply. This will enable movement of chilled meats. • Certificates will not be required for organic products and wine. • It will be possible to move goods of non-EU or non-UK origin to NI through GB when UK conditions are identical to EU ones. A specific list of products will be drafted and will include New Zealand lamb and vegetables. • Certain plants, trees, seeds, shrubs, seed potatoes and agricultural / forestry machinery will be allowed to move to NI from GB with a special plant health label with conditions. • The process for trusted traders to send or receive goods via B2B parcels that are moved by direct transport from GB-NI will be simplified. The data required will be simplified for carriers and businesses sending B2C parcels from GB-NI provided that the parcels are shipped by Authorised Carriers (a scheme the UK will setup). Nearly all customs requirements will be waived for C2C parcels (expected to be operational from September 2024). | |

| Issue | Description | Outcome |
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| | <p>For medicines, the EU’s amendment of its legislation in April 2022 to ensure GB-licensed medicines to be sold on the market in NI remains applicable with some changes including:</p> <ul style="list-style-type: none"> • Medicines will be authorised and placed on the market in NI in accordance with UK rules and UK authorisation procedures only. • Prescription medicines placed on the NI market should not carry EU safety features so that they are easily distinguishable from those placed on the EU market. <p>In tandem, the individual packs of all medicines placed on the NI market will bear a label indicating “UK only”.</p> <p>For non-trusted traders, goods not at risk of entering the EU single market will still benefit from a reduction in customs requirements when moved by direct transport. To benefit from the new customs facilitations, businesses must register to become trusted traders.</p> | |
| <p>Goods at risk of entering the EU single market</p> | <p>The criteria for considering which goods brought into NI from outside of the EU, including GB, are not at risk of subsequently entering the EU accounts for:</p> <ul style="list-style-type: none"> a) the final destination and use of the good; b) the nature and value of the good; c) the nature of the movement; and d) the incentive for undeclared onward movement into the EU, in particular incentives resulting from the duties payable. <p>The Protocol states that a good will be considered to not be at risk provided it is not subject to commercial processing in NI.</p> <p>Duties are payable on goods entering NI by direct transport from another part of the UK if those goods are at risk of entering the EU single market. Import procedures are still required as well as payment of other charges (VAT, excise).</p> | <p>The Windsor Agreement clarifies that GB-NI goods that are destined for the EU, or at risk of entering the EU, will be subject to full customs and SPS controls to protect the integrity of the EU single market.</p> <p>This reiterates the original agreement of 17 December 2020, whereby only goods destined for the EU, or where there is uncertainty or genuine risk of onward movement, where tariffs will be charged. In practice, this means that tariffs are not paid on GB-NI for most goods.</p> <p>The tariffs arrangements within the agreement are administered through the current UK Trader Scheme and will be administered by the revised Trusted Trader Scheme, which allows authorised businesses to undertake that the goods they are moving into NI are “not at risk” of onward movement to the EU, and therefore not liable to EU tariffs. The scheme is focused on goods being sold to or provided for final use by end consumers located in NI or, for internal UK trade, elsewhere in the UK. The scheme is currently open only to businesses established in NI or businesses who meet certain closely linked criteria. The new scheme will also include GB businesses which have a NI customs representative.</p> |

| Issue | Description | Outcome |
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| Goods at risk of entering the EU single market (continued) | | <p>The Windsor Agreement clarified that there are strict conditions for goods subject to processing. For processing to be considered non-commercial: either the processor must have a low turnover (below an agreed threshold), or it must belong to a specific sector (sale of retail food to consumers, construction, health care, not-for-profit and use of animal feed). Apart from consumer goods, only goods that are processed non-commercially on this basis can be moved by trusted traders.</p> <p>The UK Government's Trader Scheme also enables goods to be routed from GB through Irish ports to NI without being liable for tariffs, provided these movements are done under transit procedures and goods are under customs supervision until cleared in NI. This is subject to Rules of Origin requirements.</p> |
| Rules of origin | <p>NI remains in the customs territory of the UK and will no longer benefit from EU FTAs. Products from NI or with NI inputs can circulate freely on the EU single market but they do not have EU origin.</p> | <p>The Protocol guarantees unfettered access for NI goods to GB, irrespective of origin.</p> <p>NI goods, including with Irish inputs, continue to benefit from preferential tariffs under UK FTAs.</p> <p>Companies should review supply chains and EU FTAs to understand the impact of using non-EU (Northern Irish) inputs on their ability to claim preferential tariffs under EU FTAs.</p> <p>Under the terms of the EU-UK TCA, NI businesses using the UK Trader Scheme do not need to complete origin certification.</p> |
| Tariff rate quotas (TRQs) | <p>The Windsor Framework includes an agreed solution for the movement of some categories of steel from GB-NI that are subject to TRQs, whereby NI companies can use the EU's TRQs for steel and will therefore be able to access relevant UK-origin steel without being subject to a 25% tariff linked to the EU safeguard measures currently in place for steel imports.</p> <p>The agreement also includes a joint commitment to seek a solution for the use of TRQs by NI businesses for other relevant commodities.</p> | |

| Issue | Description | Outcome |
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| Labelling | The Protocol sets out rules for labelling in cases where indication of member state is required by EU law e.g., origin. | <p>In tandem with the above-mentioned easements, the Windsor Framework includes the introduction of 'Not for EU' labelling as a safeguard for EU single market. This will include the labelling of agri-food retail goods at different levels (individual, box, shelf signs and posters) to inform consumers that those retail goods are only intended for sale to the final consumers in NI.</p> <p>From 1 October 2023:</p> <ul style="list-style-type: none"> • Prepacked meat and fresh milk will be individually labelled. • Goods sold loose must be labelled at box level (e.g., fruit) and visible signs would need to be placed next to the price tag on the shelves in supermarkets. • Additional posters will be gradually introduced in supermarkets. <p>From 1 July 2025:</p> <ul style="list-style-type: none"> • All retail goods subject to EU customs controls, except goods sold loose, must be individually labelled. |
| UK duty reimbursement scheme | The UK has introduced a reimbursement scheme for duties paid on goods entering NI by direct transport in certain scenarios. For example, where goods subsequently are proven not to have entered the EU single market. Other charges, such as VAT, excise etc., are still payable. | <p>The UK Government operates a reimbursement scheme for GB-NI goods subject to tariffs which are subsequently shown to have remained in the UK customs territory.</p> <p>This scheme is separate to the UK Trader Scheme which aims to ensure that traders do not pay tariffs on the movement of GB-NI goods where those goods remain in the UK's customs territory in the first instance.</p> |
| Transit requirements for the UK landbridge | The Protocol includes a commitment from the UK to facilitate the "efficient and timely transit through its territory of goods moving from Ireland to another (EU) Member State or to a third country, and vice versa". | <p>The agreement on the Protocol means that unfettered access applies to goods under transit from NI to the EU via GB.</p> <p>The UK Government's Trader Scheme enables goods to be routed from GB through Irish ports to NI without being liable for tariffs, provided these movements are done under transit procedures and goods are under customs supervision until cleared in NI.</p> <p>The transit requirements for use of GB as an intermediary landbridge for moving goods from Ireland to another EU member state will be affected by the gradual introduction of the UK's Target Operating Model.</p> |

Oversight of the EU Union Customs Code in Northern Ireland

NI remains in the customs territory of the UK. However, the EU Customs Code is applied de facto in NI by UK authorities with oversight from EU officials.

On 17 December 2020, the EU and UK announced that an agreement had been reached on the practical arrangements regarding the EU's presence in NI when UK authorities implement checks and controls under the Protocol.

As per Article 12 of the Protocol, the agreement enables the EU to effectively exercise its right to be present during any activities of the UK authorities related to, amongst other things, the implementation and application of the customs provisions of the Protocol. In line with this, it is understood that EU officials will not have a permanent office or embassy, but rather technical representation only. In support, EU officials should have access to UK customs databases remotely to ensure reciprocal access to IT systems.

The Windsor Agreement includes new clarifications on how the EU Union Customs Code will be overseen in NI in tandem with the various flexibilities granted on GB-NI movements of goods.

In January 2023, the EU and UK reached an agreement on EU access to UK customs data and GB-NI trade and the UK introduced a statutory instrument to make provision for the construction of permanent Border Control Posts in NI, which will include SPS Inspection facilities on which the EU and UK have agreed for the delivery of enhanced facilities by 1 October 2023 and for the delivery of final facilities by 1 July 2025.

As detailed above, the Windsor Framework includes a **broadened Trusted Trader Scheme**, whereby goods moved by trusted traders from GB-NI that are not at risk of entering the EU single market can benefit from reduced customs formalities and SPS checks on movements of goods from GB-NI. This new scheme will be available to companies based in GB as well as NI, while currently it is limited to NI, provided the company has a customs representative in NI.

For customs oversight, this includes:

- **Physical checks** will be carried out on a risk basis and “intelligence-led approach”.
- **Remote documentary checks** will be carried out on all the general certificates accompanying the consignments of retail goods.
- **Identity checks** will be drastically reduced in tandem with the implementation of appropriate safeguards.
 - From 1 October 2023, the frequency rate will be down to 10% of all consignments of retail goods.
 - From 1 October 2024, the frequency rate will be further reduced to 8% when all milk and dairy products are individually marked (see Labelling section below).
 - From 1 July 2025, the frequency rate will be furthermore reduced to 5% when all retail goods are individually marked (see Labelling section below).

| Issue | Description | Outcome |
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| | | The EU retains the right to suspend partly or fully the facilitations to address specific problems or systematic failures of compliance. This includes that the Trusted Trader Scheme can be suspended if the UK fails to provide the EU with access to the relevant UK IT customs systems and databases or the UK does not meet other relevant commitments. |

2. Governance and general cooperation

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| Governance of the Protocol | <p>The Withdrawal Agreement established a Joint Committee for oversight of the Withdrawal Agreement including the Protocol and a dedicated Specialised Committee to facilitate the implementation and application of the Protocol, advising the Joint Committee. A Joint Consultative Working Group (JCWG) was also established by the Protocol working on the day-to-day, technical implementation of the Protocol.</p> | <p>Since 2021, the Joint Committee and the Specialised Committees, including the Specialised Committee on the Protocol, have been meeting regularly to facilitate the implementation and application of the Protocol and find workable solutions within the framework of the agreed Withdrawal Agreement.</p> <p>The new Windsor Framework restates the commitment to use existing structures within the Withdrawal Agreement (Joint Committee, Specialised Committees and Joint Consultative Working Group) to oversee implementation of the new Framework. Both sides commit to using these to address issues that may arise, share regulatory developments and “anticipate and discuss any practical difficulties at stake”.</p> <p>To further strengthen engagement between authorities, new structured sub-groups will be established, to support the JCWG. They will assist the working group in carrying out its functions as an effective forum for the exchange of information and mutual consultation. This will better ensure that the UK is able to discuss its views in the working group on EU acts within the scope of the Protocol, including on the basis of input provided by stakeholders in NI, so they can be considered before such EU acts are adopted.</p> <p>Specifically, a new Special Body on Goods will be established, under the Specialised Committee on the implementation of the Protocol. This formation will assess the potential impact of that future legislation in NI, anticipate and discuss any practical difficulties at stake.</p> <p>On NI, the European Commission has introduced enhanced measures to deepen engagement with people and businesses in NI. See section below.</p> |
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| Issue | Description | Outcome |
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| Enhanced engagement with Northern Ireland Stakeholders | <p>The Windsor Framework creates a new ‘Stormont Brake’, an emergency mechanism which would allow the UK government, at the request of 30 Members of the Legislative Assembly (MLAs) in NI, in the most exceptional circumstances, to stop the application of amended or replacing provisions of EU law, that may have a significant and lasting impact specific to the everyday lives of communities in NI.</p> <p>The precise conditions under which the MLAs can trigger the process are outlined in the UK unilateral declaration on involvement of institutions of the 1998 Good Friday (Belfast) Agreement and in the new Article 13(3a) of the Protocol. For a notification under Article 13(3a) to be made in good faith, it needs to be made under each of the conditions set out in the unilateral declaration. An arbitration panel may rule on whether these conditions have been met.</p> <p>After the UK has notified the EU that the Brake has been triggered, an exchange of views will take place in the Joint Committee on the implications of the amended or replacing act for the proper functioning of the Protocol. If the parties cannot agree either to add an amended or replacing act or to other measures to ensure the proper functioning of the Protocol, the EU can take appropriate remedial measures, as is the case under Article 13(4) of the Protocol.</p> <p>The Brake can be triggered only after having used every other available mechanism, and where the amended or replacing EU act, or a part of it, significantly differs in scope or content from the previous one and application of such amended or replacing act would have a significant impact specific to everyday life of communities in NI in a way that is liable to persist.</p> <p>If the brake is triggered and if the conditions are met, the amended EU act would not apply automatically in NI.</p> <p>More generally, the European Commission has introduced other enhanced measures to deepen engagement with people and businesses in NI, including through the Joint Consultative Working Group. Other measures include an annual presentation by the Commission on upcoming policy initiatives and legislative proposals. The Commission will present its annual Work Programme, highlighting relevant proposals of interest for NI stakeholders and will publish a list of new upcoming EU initiatives of relevance to NI on the Protocol webpage. The Commission will also organise information sessions and workshops on new EU initiatives, if requested. Furthermore, relevant public consultations and/or involvement of NI stakeholders in targeted consultations for specific cases will be included on the Protocol webpage. Finally, in relevant impact assessments for new EU policy initiatives, there will now be a dedicated overview of NI stakeholders’ input. This will set out their views on the implications of the initiative for NI and how they have been taken into account in the final proposal.</p> | |

| Issue | Description | Outcome |
|---------------------------------|--|--|
| North-South cooperation | <p>The Protocol must be implemented in a way that protects North-South cooperation in areas such as broadcasting, energy, telecommunications, environment, and education. The UK and Ireland can continue to make new arrangements that build on the Belfast / Good Friday Agreement.</p> | <p>At the time of writing, no impediments to North-South cooperation by the implementation of the Protocol have been identified within the Protocol or the Windsor Framework.</p> <p>The Joint Committee agreed arrangements to enable the continued operation of the island's Single Electricity Market. These arrangements include that NI is free to regulate its own retail market and rules for consumers as it sees fit. The UK Government Command Paper notes that “both sides have agreed to a focused, proportionate scope of the applicable rules”. The new Framework does not contain any provisions on the Single Electricity Market.</p> <p>In relation to medicines, in April 2022, the EU amended its legislation to ensure the uninterrupted supply of medicines from GB-NI. The new Framework builds on this and provides that:</p> <ul style="list-style-type: none"> - New and innovative medicines lawfully placed on the market in NI are to be only covered by a valid marketing authorisation issued by the UK according to the law of the UK. The placing on the market of these medicines will therefore not anymore be regulated by EU-wide authorisations granted by the Commission. - The EU safety features that must be displayed on packs of medicines subject to prescription in the Union should not appear on packs of medicines made available to patients in NI. <p>These provisions ensure that medicines approved for use in the UK can also now be sold in the region even if not yet approved in the EU.</p> <p>These solutions are accompanied by safeguards to ensure that all medicines placed on the market in NI will not be made available in any EU member state. These include labelling UK packs with a specific label: “UK only”, continuous monitoring by the UK competent authorities, as well as the possibility for the Commission to unilaterally suspend the application of the new rules in case of UK non-compliance with its obligations.</p> |
| Common Travel Area (CTA) | <p>The Protocol protects the CTA and ensures that Ireland and the UK can continue to make bilateral arrangements on the movement of citizens. The CTA gives certain rights to citizens of the UK and Ireland, e.g., access to social benefits, education, employment, healthcare, and social housing supports, the right to vote in certain elections.</p> | <p>At the time of writing, no impediments to the CTA by the implementation of the Protocol have been identified. EU citizens other than those who are Irish are not covered by the CTA and so will not enjoy the same treatment by the UK. The new UK Immigration regime has created barriers for NI firms to recruit and retain EU workers.</p> <p>In relation to the free movement of people between the UK and Ireland, the agreement in principle includes provisions on the rights of individuals. The UK Government’s Command Paper (December 2020) notes express commitment to ensuring no diminution of rights, safeguards or equality of opportunity as set out in the Belfast / Good Friday Agreement, resulting from the UK’s withdrawal from the EU. The UK Government has made legislative changes to give this effect.</p> <p>The Windsor Framework does not refer to the CTA.</p> |

| Issue | Description | Outcome |
|--|--|---|
| Fraud and illegal activity | <p>Both sides commit to counter fraud and any illegal activity affecting their financial interests.</p> <p>Article 12 of the Protocol enables the EU to effectively exercise its right to be present during any activities of the UK authorities related to the implementation and application of the customs provisions of the Protocol. This includes actively monitoring instances of fraud or illegal activity either from GB-NI or NI-EU.</p> <p>In relation to GB-NI movements, under Article 9 of the Joint Decision of the Joint Committee on the determination of goods not at risk, an overall emergency brake mechanism is possible in 2024 in the event of significant diversion of trade, or fraud or other illegal activities.</p> | <p>Businesses taking part in the Trusted Trader Scheme can use the 'green lane' and will not be subject to checks unless smuggling is suspected, based on risk assessments and intelligence. Goods destined for the EU will undergo full EU customs checks via the 'red lane', akin to GB-IE movements of goods.</p> <p>In terms of safeguards, the UK is constructing operational SPS Inspection facilities and confirms it will provide EU representatives with access to relevant UK IT databases, meaning the UK will share live data with the EU on movements of goods from GB-NI.</p> <p>The EU will therefore have near real-time access to the relevant UK customs databases and IT systems used to record movements of goods between GB and NI. If risks are detected, EU representatives can request UK customs officials to stop and check the goods. In case the EU no longer has access to such databases and IT systems, or in case the trusted trader scheme is seriously mismanaged, the EU can suspend the entire scheme.</p> <p>The UK has committed to reinforce its market surveillance and enforcement activities to ensure businesses' compliance with the new rules.</p> |
| UK state aid, including in relation to agricultural goods | <p>The UK applies EU state aid rules in NI where potential interventions might impact trade between NI and the EU. The UK can provide support for the production of and trade in agricultural products under certain conditions.</p> | <p>EU state aid rules will continue to apply to NI as per the Protocol.</p> <p>The Framework builds upon the unilateral declaration of 2020 and states that to further clarify the provisions on state aid in the Protocol, the Commission and the UK government will publish a Joint Declaration setting out a joint understanding of the circumstances in which subsidies granted by UK authorities can affect trade between NI and the EU, and which are therefore subject to the Protocol.</p> |

| Issue | Description | Outcome |
|---|--|---|
| <p>UK state aid, including in relation to agricultural goods</p> | <p>In relation to agricultural and fisheries subsidies, the Protocol sets out that in NI a certain amount is exempt from EU state aid rules. The Joint Committee has agreed on the maximum ceiling of exemptions from EU state aid rules which provides for a baseline of c.€420m of agricultural support and for c.€18m for fisheries over a five-year period.</p> <p>In December 2020, the UK adopted a unilateral declaration outlining that state aid breaches “cannot be merely hypothetical, presumed, or without a genuine and direct link to Northern Ireland. It must be established why the measure is liable to have such an effect on trade between Northern Ireland and the Union, based on the real foreseeable effects of the measure.”</p> | <p>The Commission and the UK government agree that EU state aid rules referred to in Article 10(1) of the Protocol are only applicable to subsidies that have a “genuine and direct link to Northern Ireland.” For this genuine and direct link to exist, the subsidy in question needs to have “real foreseeable effects” on trade between NI and the EU. These effects should be material, rather than merely hypothetical or presumed. The mere placement of goods on the NI market is therefore not sufficient, on its own, to create a genuine and direct link.</p> <p>The Joint Declaration neither modifies the substance of Article 10(1) nor restricts its application. Article 10(1) was and remains intended to apply only to subsidies that have an effect on trade between NI and the EU, to reflect NI’s unique access to the EU single market.</p> <p>This Joint Declaration details a common understanding of the circumstances in which such an effect on trade exists, to provide more clarity to stakeholders. It therefore does not carve out any subsidies that previously fell within the scope of Article 10(1).</p> |
| <p>Fisheries</p> | <p>The Joint Committee has set out the conditions, including quantitative, under which certain fish products can be landed duty free in NI. The Windsor Framework does not impact fisheries arrangements.</p> | |

Background on developments since October 2021

January-February 2023 Intensive ‘tunnel’ negotiations continue

On 9 January, European Commission Vice-President Maroš Šefčovič (VP Šefčovič) met Foreign Secretary James Cleverly and the NI Secretary Chris Heaton-Harris in London to take stock of work to find joint solutions on the concerns raised by businesses and communities in NI. An agreement was reached on the way forward regarding the specific question of the EU's access to UK IT systems. The next day, the UK and EU agreed a deal on trade data sharing to provide real-time information on goods going from GB-NI.

On 12 January, the UK Government published a statutory instrument which would allow ministers to complete the construction of border posts at Northern Irish ports. The Official Controls (Northern Ireland) Regulations 2023 published will empower officials in Whitehall to expedite the building of such posts, despite this normally being a devolved power for the Northern Executive. The posts were supposed to be built by the NI Department of Agriculture, but in the absence of the Executive since the elections last May, the UK Government stepped in.

The EU-UK Joint Committee Co-chairs Maroš Šefčovič and James Cleverly met again on 16 January via video conference to discuss progress on the NI Protocol since their last meeting on 9 January.

In early February intensive ‘tunnel’ negotiations continued and PM Sunak visited NI to hold talks with Northern Executive party leaders.

December 2022

On 14 December, EU-UK Joint Committee Co-chairs Maroš Šefčovič and James Cleverly held an in-person meeting in Brussels.

On 19 December, the Commission adopted a notice which extends to 31 December 2025 current arrangements for the movement of veterinary medicines from GB to Cyprus, Ireland, Malta, and Northern Ireland to ensure the continuity of supplies.

November 2022 EU-UK Parliamentary Partnership Assembly

The second EU-UK Parliamentary Partnership Assembly took place on the 7 November 2022, citing the Russian invasion of Ukraine and strong economic headwinds with rising inflation, energy, and food prices across Europe as additional key reasons to strengthen EU-UK collaboration. VP Šefčovič called for a strategic, enduring, and mutually beneficial partnership in full respect of international agreements, notably the Withdrawal Agreement including the Protocol and the Trade and Cooperation Agreement (TCA). He mentioned his appreciation for Foreign Secretary James Cleverly, with whom meaningful discussions on EU-UK engagement were restarted in September after a hiatus since February. VP Šefčovič also highlighted that practically all institutional arrangements required by the TCA were in place, and that meetings of most of the committees including the EU Domestic Advisory Group and the Civil Society Forum had already taken place for 2022.

On 30 November, the Council Presidency and European Parliament reached provisional agreement on new legislation to strengthen the European Commission's powers of enforcement in relation to the Withdrawal Agreement and EU-UK TCA. The text empowers the Commission to adopt measures which could be adopted by the EU in case of need via an implementing act, indicating their duration where appropriate.

October 2022 Rishi Sunak becomes UK Prime Minister

On 20 October 2022, Liz Truss announced her resignation after 45 days in office, but stayed in power until her successor Rishi Sunak became Prime Minister on 25 October. Prime Minister Rishi Sunak (PM Sunak) chose to retain the relevant ministers James Cleverly and Chris Heaton-Harris and talks continued but in a more positive way. On 25 October the House of Lords commenced the committee stage of the NI Protocol Bill which involves detailed line by line examination of the separate parts of the Bill.

September 2022 Liz Truss becomes Prime Minister

On 6 September, Liz Truss accepted an invitation from Queen Elizabeth to form a government, succeeding Boris Johnson. She appointed James Cleverly as Foreign Secretary and Chris Heaton-Harris as Secretary of State for Northern Ireland and talks resumed with the EU on the NI Protocol.

In another unilateral move by the UK Government, Liz Truss's government announced its intention to maintain a grace period in response to EU infringement proceedings in a letter delivered by the UK's mission to the EU on 15 September. In this letter, the UK argued that maintaining the status quo was necessary to allow talks to proceed with the EU.

Ursula von der Leyen did not meet with Liz Truss on her visit to London for Queen Elizabeth's funeral on 19 September, but they released a joint statement from UN General Assembly in New York on 21 September stating a discussion on EU-UK relations including energy, food security and the Protocol.

On 3 October, the UK announced an extension to the Trader Support Service (TSS) for GB-NI trade until the end of 2023.

July 2022 Boris Johnson announces resignation as UK Prime Minister and EU launched more infringement proceedings

On 7 July Boris Johnson announced his resignation but that he would remain Prime Minister until a new leader was in place.

On 20 July the NI Protocol Bill received its third reading and was passed in UK House of Commons. The next day, the EU launched four new infringement procedures against UK for failure to implement additional parts of Protocol. Firstly, for failing to comply with the applicable customs requirements, supervision requirements and risk controls on the movement of goods from NI-GB. Secondly, for failing to notify the transposition of EU legislation laying down general EU rules on excise duties. Thirdly, for failing to notify the transposition of EU rules on excise duties on alcohol and alcoholic beverages. Finally, for failing to implement EU rules on VAT for e-commerce, namely the Import One-Stop Shop (IOSS). The UK was notified it had two months to reply to the letters requesting remedial actions to restore compliance, after which the Commission stands ready to take further measures.

June 2022 Northern Ireland Protocol Bill introduced and EU infringement proceedings launched

On 13 June the NI Protocol Bill was introduced in the UK Parliament which would unilaterally disapply several key provisions of the Protocol. The main fields concerned were i) customs and movement of goods, ii) regulation of goods, iii) state aid, and iv) application of EU law. The Bill provided that specific provisions of the Protocol would not have effect in the UK and gave the UK Government powers to override certain provisions.

In response to this, on 15 June the EU launched infringement proceedings against the UK for breaking international law, stating that despite repeated calls on the UK Government to implement the Protocol, they had failed to do so. The aim of the infringement proceedings was to restore compliance with the Protocol. This EU legal action was two-pronged. First, it progressed the infringement launched on 15 March 2021 to its second stage by issuing a Reasoned Opinion. Secondly, two new infringement proceedings were launched regarding the EU's sanitary and phyto-sanitary (SPS) rules and failing to provide the EU with certain trade statistics data in respect of NI. The EU also published two position papers on arrangements from October 2021 in the area of customs and SPS rules to show that solutions could be found within the Protocol.

May 2022 First meeting of the EU-UK Parliamentary Partnership Assembly

On 5 May the NI Assembly election was held. In a historic outcome, Sinn Féin became the largest party, making Michelle O'Neill First Minister and marking the first time an Irish nationalist / republican party won the most seats in an Assembly election in NI. However, the DUP decided to block the functioning of the power sharing institutions at Stormont to protest the Protocol, claiming the arrangements undermined NI's place within the UK.

The first meeting of the EU-UK Parliamentary Partnership Assembly took place on 12 May against the backdrop of the UK Government's recent announcement to take unilateral action effectively disapplying the Protocol. VP Šefčovič emphasised at the meeting that the Protocol is the only solution that "squares the circle" between Ireland and the form of Brexit chosen by the UK. He stressed that this solution was agreed with the UK Government and that its implementation was a priority and precondition for a constructive bilateral relationship between the UK and the EU. VP Šefčovič listed the unprecedented practical and durable solutions within the framework of the Protocol proposed by the EU to the UK Government as testament to the EU's commitment to find a solution and lamented that UK counterparts had not met them halfway.

February 2022 EU-UK talks ceased in advance of the NI Assembly elections

On 3 February, VP Šefčovič met with Foreign Secretary Liz Truss via video conference to discuss implementation of the Protocol. He pointed out that "the Protocol, the cornerstone of the Withdrawal Agreement, is an international agreement. It is therefore the UK Government's responsibility to uphold its legal obligations – the only solution we

have found with the UK government to protect the Belfast / Good Friday Agreement, taking into account the type of Brexit the UK government chose. It is by respecting our international obligations and living up to our responsibilities, that trust is built and maintained, also in the future.”

On 11 February, VP Šefčovič met with Foreign Secretary Liz Truss in London, agreeing that progress was needed in their talks in the interest of the people of NI, and that officials would continue intensive discussion in the coming days.

The ninth meeting of the EU-UK Joint Committee on the implementation agreement took place on 21 February, where the Commission presented a robust package of far-reaching, impactful, and durable solutions with the core purpose of benefitting the people and businesses of NI. In the meeting, they discussed citizens’ rights, took stock of the intensified talks taking place over the last months, and reiterated their intention to work hard on outstanding issues.

October 2021 Commission proposed measures for the Protocol

On 13 October 2021, the European Commission published a package of proposed measures on the Protocol to address concerns raised by Northern Irish stakeholders and the UK Government. The Commission proposals seek to facilitate the sustainable implementation of the Protocol, mostly concerning trade in goods, in response to the UK Government’s most recent Command Paper (21 July 2021). The Commission’s proposals included four non-papers for discussion with the UK Government based on issues raised by Northern Irish stakeholders:

1. A proposal to enhance engagement direct EU engagement with Northern Irish stakeholders, including business, and authorities.
2. A proposal on medicines to guarantee that medicines licensed in GB, as well as in the EU, can continue to circulate in NI.
3. A proposal to simplify sanitary and phyto-sanitary (SPS) conditions for trade from GB-NI: A specific GB-NI SPS solution providing for simplified certification and a reduction of official checks for retail goods moving from GB to be consumed in NI by c.80%. This will be provided for through an extension of the current scheme for trusted traders and the designation of a broader range of products as not at risk of subsequently entering the EU single market.
4. A proposal to ease customs requirements: This would see a general reduction in formalities for trade in goods from GB-NI by c.50% through simplifications and the EU requiring fewer documents.

When taken together, the SPS and customs proposals would essentially create a two-lane approach to trade in goods from GB to the island via NI: ‘Green lane’ for NI-only, ‘Red lane’ for IE-only.

These concessions would be subject to the UK meeting certain conditions. Specifically for the proposals on SPS and customs, in December 2020 the UK had agreed to build Border Control Posts and provide real-time access to its IT systems to facilitate EU monitoring of customs procedures. To lessen customs checks, the EU proposed that the UK introduce specific packaging and labels indicating products are UK-only to guarantee they would not subsequently enter the EU single market. In tandem, the Commission proposed a rapid reaction mechanism for any identified problem in case of UK failure as well as a review and termination clause.

The European Commission non-papers do not address the role of the Court of Justice of the EU given the issue has not been identified as problematic for Northern Irish stakeholders.

The UK Government tentatively welcomed the proposals and, since 14 October, the Commission and UK Government engaged in discussions on the proposals with a view to reaching an agreement in early 2022.

As part of the discussions, the UK Government submitted legal texts to the EU on the basis of its Command Paper and threatened that it would exercise Article 16 if an agreed solution is not found.

This period of discussions follows Lord Frost’s announcement of the UK’s unilateral extension to all pre-existing grace periods and easements already in force, initiating a standstill period to facilitate negotiations. The EU responded by taking note of the UK decision and confirmed it would not commence any new legal proceedings against the UK at the time, reiterating it would enter a renegotiation of the Protocol.

July 2021 UK Government Command Paper

On 21 July 2021, the UK Government published a Command Paper setting out its position for substantial changes to the Protocol and seeking a renegotiation of the Protocol. Principally, the UK proposed that:

1. Customs checks would only be necessary for goods entering NI from GB that were clearly destined for the Irish market;
2. A dual regulatory system would be operated so that goods produced in GB would be recognised in NI and vice versa;
3. All medicines would be removed from the scope of the Protocol;
4. The requirement for customs information to be submitted on most goods entering GB from NI would be removed;
5. The Court of Justice of the EU's role would be eliminated from the Protocol.

Specific details of the EU-UK agreement on the implementation of the Protocol

On 18 December, the EU and the UK confirmed the specific details of the Joint Committee agreement. The Joint Committee adopted four decisions on the Protocol:

- **Practical arrangements for the EU presence in Northern Ireland:** The agreement means that EU representatives will have the necessary access to ensure that the Protocol is correctly implemented by UK authorities in NI, thereby protecting the integrity of the EU single market, including presence “at all places where goods and animals enter or exit NI through ports or airports” and continuous, real-time access to UK IT systems and databases.
- **Goods “not at risk” of entering the EU's single market:** Goods which can be shown to remain in NI will not be subject to tariffs. Only goods destined for the EU, or where there is uncertainty or genuine risk of onward movement, tariffs will be charged (if applicable). This will be administered through the new ‘UK Trader Scheme’, allowing authorised businesses to undertake that GB-NI goods are “not at risk” of moving to the EU. It will be only open to businesses established in NI, or businesses who meet closely linked criteria.
- **Exemption of NI agricultural and fish subsidies from EU State aid rules** up to a maximum ceiling of c.€420m of agricultural support and for c.€18m for fisheries over a five-year period.
- **Correction of some errors and omissions** in Annex 2.

In addition, the EU and the UK took a series of unilateral declarations to reflect their mutual understanding on issues where it was deemed legally inappropriate to take a Joint Decision, including on:

- **Border Control Posts specifically for checks on animals, plants and derived products:** The system will be based on electronic checking as far as possible; “identity checks” focused on a simple check of the seal of a truck; and physical checks “based on risk assessments and reflecting the full range of flexibilities provided in legislation”. In practice, physical checks on retail goods can be reduced “to close to zero”.
- **Export declarations:** Export or exit declarations will not be required for most goods for internal UK movements, except 14 categories of trade linked to international obligations (e.g., endangered species).
- **Supply of medicines:** A phased process for implementing medicines regulation in NI until 31 December 2021. From 1 January 2021 NI will follow the EU acquis for medicines, moving a medicine from GB to NI will essentially be the same procedure as moving medicines to the EU27. From a practical perspective not much will change over the next 12 months.
- **Supply of chilled meats, and other food products to supermarkets:**
 - **Retail:** Authorised traders (e.g., supermarkets and their suppliers) will have a grace period until 1 April 2021 from official health certification for products of animal origin, composite products, food and feed of non-animal origin and plants and plant products. During this period, UK and EU rules remain aligned prior to the introduction of a new EU rules relating to animal health on 21 April. It is important to note that this 3-month grace period only applies to health certificates and does not relate to customs declarations and safety and security declarations, which will be required.
 - **Meat:** Chilled meats can continue to move between GB and NI until 30 June 2021, subject to appropriate certificates and channelling procedures. This will provide time for NI businesses to make more permanent arrangements. Implicitly, this also means chilled meats can move from IE-GB. Beyond that date an Free Trade Agreement (FTA) with specific measures on SPS would be needed.

- **Application of EU state aid rules in NI:** EU state aid rules will not apply to NI as today but will be limited to movement of goods and wholesale electricity markets, and concern only measures that affect NI-EU trade. State aid provisions in the Protocol will only apply to GB businesses who have a very direct link to NI.

December 2020 agreement on implementation of the Withdrawal Agreement

On 17 December, the EU-UK Joint Committee took a series of formal decisions related to the implementation of the Withdrawal Agreement, including the Protocol to ensure it would be operational as of 1 January 2021.

The political agreement included resolutions on the decisions under the responsibility of the Joint Committee including: the EU's presence in NI, when UK authorities implement checks and controls, determining criteria for GB-NI goods to be considered “not at risk” of entering the EU, the exemption of agricultural and fish subsidies from state aid rules, the finalisation of the list of chairpersons of the arbitration panel for the dispute settlement mechanism so that the arbitration panel can start operating as of next year, as well as the correction of errors and omissions in Annex 2 of the Protocol.

In addition, the agreement in principle covered specific measures to undertake required checks on animals, plants and derived products at Border Control Posts/Entry Points, export declarations, the supply of medicines, the supply of chilled meats, and other food products to supermarkets, and the application of EU state aid rules to NI.

In view of this agreement, the UK withdrew the offending clauses of the UK Internal Market Bill, Sections 44, 45 and 47, which would have broken the UK's legally binding commitments under the Protocol. Accordingly, the Commission withdrew its infringement proceedings against the UK Government.

December 2020 UK Government Command Paper

On 10 December, the UK Government published a Command Paper on the Protocol, setting out the details of the agreement reached between the EU and UK, alongside three Joint Decisions and five unilateral declarations to be made by the EU and the UK. It is important to note that unlike Joint Decisions, these ‘unilateral declarations’ do not have an equivalent status of being legally binding, but rather reflect the EU and UK's shared understanding.

As previously outlined in the UK Government's ‘Northern Ireland Command Paper’ (May 2020), the UK Government has focussed on achieving an agreement which means that the Protocol will be implemented in a way that protects the economy of Northern Ireland and its place in the UK internal market, including:

- a) Unfettered access for NI's businesses to the rest of the UK;
- b) No tariffs on internal UK trade; and
- c) NI benefits from UK trade deals.

The UK Government Command Paper confirms the following:

- **Qualifying NI goods definition:** Any good physically present in NI can potentially qualify as a NI good for movement to GB. This will be tightened to only benefit businesses established in NI in the future but the UK Government has not yet confirmed a date. Thereafter, protections for qualifying businesses on arrival in GB will apply when goods are moved via NI and Ireland. Non-NI traders moving “non-qualifying goods” will be subject to third country customs and agri-food checks when these are implemented.
- **Single Electricity Market:** NI will benefit from the Single Electricity Market but is free to regulate its own retail market and rules.



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